

## Response by the Australian Hotels Association (SA) and Clubs SA to an IGA proposal to restrict external signage

### Preliminary comments

The AHA-SA/CSA continues to demonstrate a strong commitment to fostering a **culture of responsibility** and therefore **a socially responsible club and hotel gaming machine industry**. This philosophy and commitment to collaborative partnerships as demonstrated through *Gaming Care* and *Club Safe* most recently, is entirely consistent with and supportive of the principles of the **National Framework on Problem Gambling 2004-2008**, the joint initiative of the Australian Government and State and Territory governments through the Ministerial Council on Gambling and co-signed by the South Australian Government. Both the AHA-SA and Clubs SA are committed to working with all stakeholders to ensure '**an economically viable and socially responsible club and hotel gaming machine industry in this State**'. (Independent Gambling Authority Act 1995 Section 11 [2a])

As we have argued before, it is crucial that harm minimisation strategies are not initiated on an ad hoc basis or introduced on the strength of one stakeholder's urging in the absence of supportive evidence of its efficacy in addressing harm minimisation or problem gambling.

It is the AHA-SA/CSA's submission that measures should be introduced only if:

- there is **strong evidence** it will be effective, or, in the absence of evidence
- there is **strong stakeholder consensus** for the measure.

The AHA-SA/CSA encourages members of the Authority to consider the approach taken by the Independent Pricing and Regulatory Tribunal of NSW (**IPART**) in their review of various problem gambling measures in NSW (sourced at [www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).

The **IPART** approach to promoting and encouraging a culture of responsibility is totally consistent with the philosophy reflected in the guiding principles established by the Ministerial Council on Gambling - National Framework on Problem Gambling whose principal relating to research and evaluation is reproduced below.

**'Research and evaluation are essential to ensure that initiatives are likely to minimise problem gambling without unintended negative consequences for the community.'** (sourced at [www.facs.gov.au](http://www.facs.gov.au))

IPART terms of reference for the review were wide reaching, requiring assessment of:

- 14 specified harm minimisation measures, (*including community services such as counselling services*);
- harm minimisation measures introduced in April 2001; and
- further harm minimisation measures that had been identified.

The Tribunal was required to examine the impact of each harm minimisation measure on the general community, gamblers and problem gamblers, and to consider the direct and indirect impacts of those measures on employment, support for community projects, and recreational and social opportunities.

The Tribunal found that the effectiveness in NSW would be improved by developing a coherent, integrated responsible gambling policy framework. This policy framework should include a more evidence-based approach to evaluating, selecting and modifying the measures implemented under that policy.

The Tribunal (IPART, p6) adopted the following approach:

- ***“Measures should be repealed or introduced only where there is clear evidence or broad stakeholder consensus that the measure is respectively ineffective or effective in achieving its objectives.***
- ***Measures should be refined where it is clear that the ongoing operation of the measure can be improved or the evidence or stakeholder opinion generally supports such refinements.***
- ***Measures should be prioritised for evaluation where for existing measures, there is evidence or stakeholder consensus questioning the effectiveness of the measure or for proposed measures, there is evidence or stakeholder consensus supporting the measure.***
- ***The government should note industry and community concerns about the operation of measures where these stakeholder concerns are clear and there is not sufficient evidence to support a recommendation for responsible gambling purposes.”***

The AHA-SA/CSA strongly believes this approach would ensure accountability for any proposition and decision, and would greatly encourage and enhance the acceptance of sensible reforms because **stakeholder support must be fundamental to effective implementation.**

The AHA-SA/CSA recommends that before any measures are introduced, proper research should form the basis for any decision. Where no research is available, greater consideration should be given to expert views and stakeholder consensus (IPART p5). Furthermore, the Authority must ensure that any measures are assessed against the criteria set out in Section 11(2a) of the Independent Gambling Authority Act 1995 and reproduced below.

### **Section 11- Functions and Powers of Authority**

(2a) *In performing its functions and exercising its powers under this Act or a prescribed Act, the Authority must have regard to the following objects:*

- (a) *the fostering of responsibility in gambling and, in particular, the minimising of harm caused by gambling, recognising the positive and negative impacts of gambling on communities; and*
- (b) *the maintenance of an economically viable and socially responsible gambling industry (including an economically viable and socially responsible club and hotel gaming machine industry) in this State.*

## **Codes issue 2: External signage**

### • **Industry practice**

The AHA/CSA argued in our submission to the Review 2006 (**Figure 1**) that the concept of further restrictions on signage was unacceptable simply because:

1. for some venues the cost of complying with a restriction or ban would be **very** significant (see Eagles Bar & Bistro – **Figure 2**);
2. such signage should already be subject to the Advertising Code and any offending messages dealt with there;
3. that there is little evidence concerning the effectiveness of the measure (IPART, p68).

### **Figure 1**

***Extract from the Joint Response by the Australian Hotels Association (SA Branch) and Clubs SA to the Independent Gambling Authority Review 2006 - Regulatory Functions – 1 May 2006***

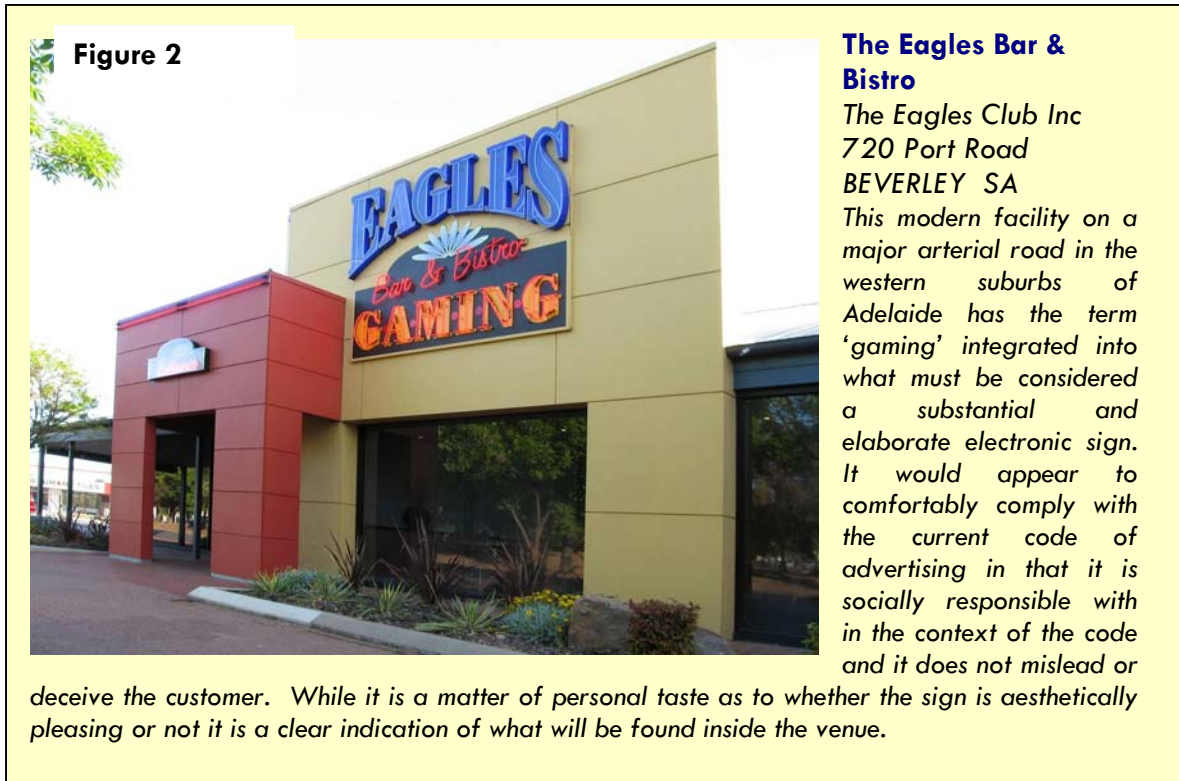
#### **MEASURE 2.2: ON AND IN-VENUE SIGNAGE**

The AHA-SA/CSA believes that it is unacceptable to restrict legitimate business operations being advertised by appropriate signage. Provided that on and in-venue signage is not misleading, and complies with the Advertising Code, there should be no limitations after all, that is the purpose of an Advertising Code. Any restrictions as to signage in terms of size or position will incur significant costs for licensees.

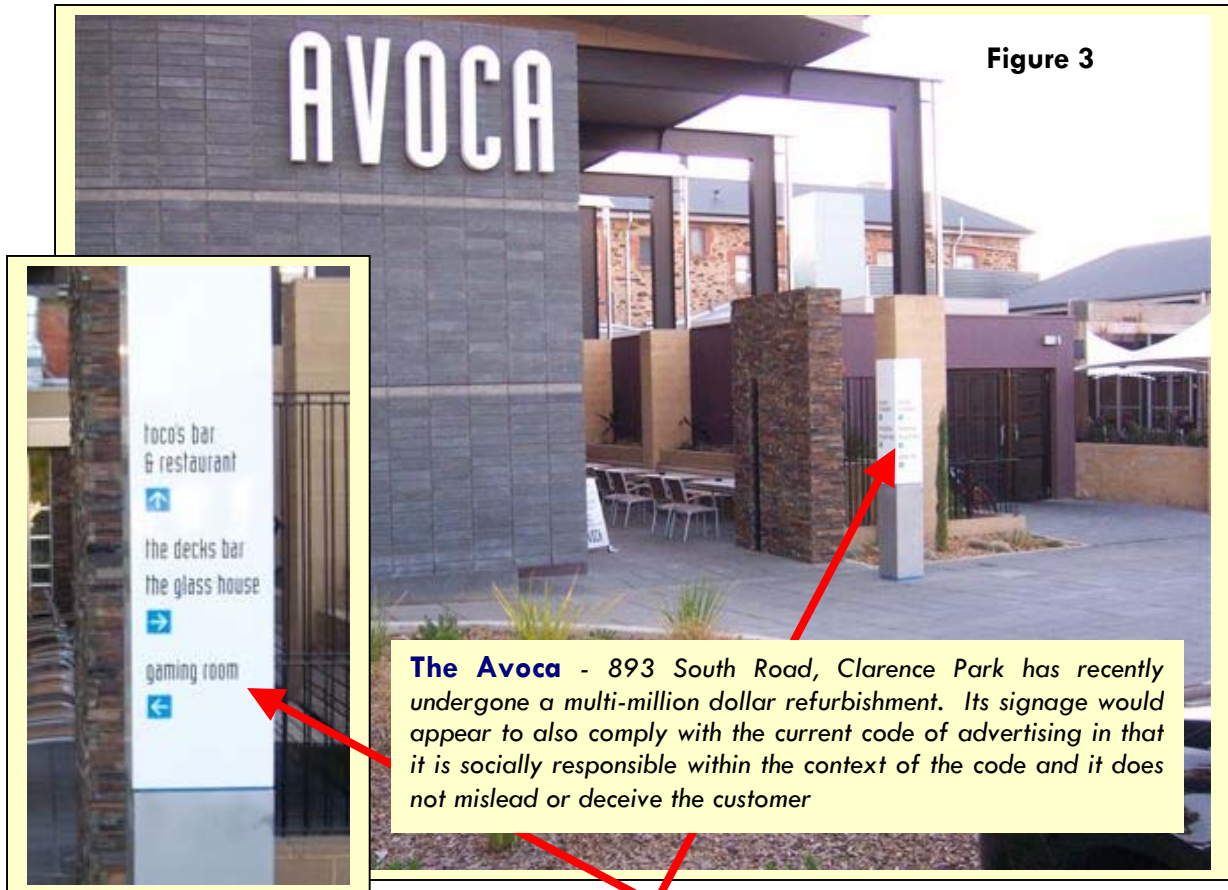
There is no evidence to suggest signage encourages problem gambling. We note in particular that since NSW banned venue signage in 2002 there has been no suggestion of a reduction in problem gambling. The AHA-SA/CSA is also concerned at the significant cost of removing signage from venues. Many venues have illuminated signage which integrate a range of venue services and products but include gaming, TAB etc. For many it is not simply removing/replacing a panel. We simply doubt the impact this strategy would have for reducing problem gambling.

As a result we can only concluded that this strategy would simply have no impact for reducing problem gambling. The following are some relevant examples;

**Figure 2:** Informative and directional signage integrated into a modern venue design.

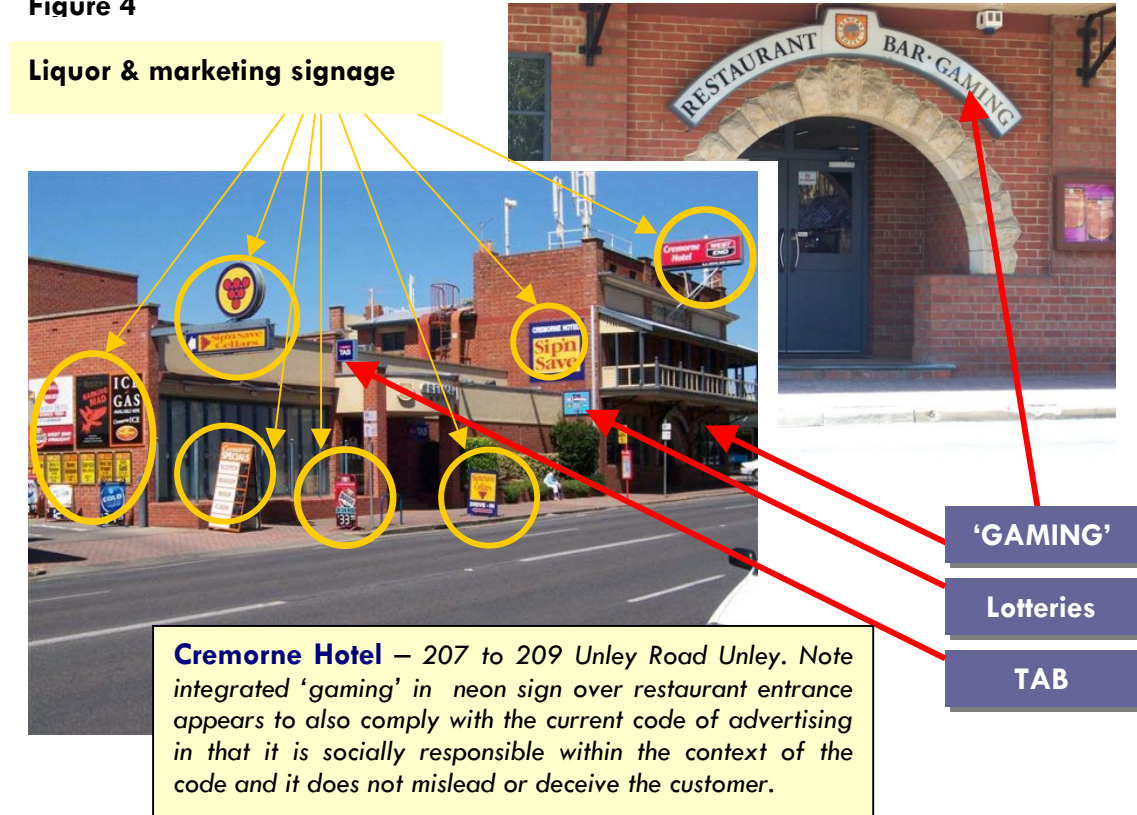


**Figure 3:** Equally, we note many examples of discrete signage i.e. the Avoca Hotel



In fact it is difficult to find many examples (**Figure 4**) where the gaming signage is not completely overwhelmed by liquor beverage and marketing groups signage and competing gaming services;

**Figure 4**



The question must ultimately be asked “what influence does signage have on problem gambling”? To suggest that external signage acts as stimuli for **some** problem gamblers and therefore all signage should be removed, is as nonsensical as suggesting that **some** problem gamblers will be stimulated to gamble by the mere presence of a hotel or club and their knowledge of what is inside, so they should also be removed.

• **Impact of signage on problem gamblers**

IPART (p68) notes the very strong support for the advertising prohibition by **non-industry** stakeholders. IPART notes that this is despite little evidence concerning the effectiveness of the measure of restricting external signage. IPART recognises the opposition to such measures by the gaming industry.

We understand that the external signage restriction was imposed in 2002 in NSW. It therefore must be of some value and interest to consider the revenue generated post that implementation of these restrictions.

It would appear from statistics published by the NSW Department of Gaming and Racing ([www.dgr.nsw.gov.au/industry\\_stats.asp](http://www.dgr.nsw.gov.au/industry_stats.asp)) – see table 1, that net gaming revenue (NGR) has increased consistently by between 5% and 6% for trading years

2002/03, 2003/04 and 2004/05 and at a time when **venues and machines numbers were stagnant** or in fact declining i.e. the reduced number of venues and machines was likely to reduce or see revenue plateau rather than increase because of less access or availability.

**Table 1: NSW Gaming Statistics 2002 -2005**

Year	Clubs	% Change	Hotels	% Change
<b>2002/03</b>				
Machines	75,214		24,255	
State-wide NGR	\$3b		\$1.4b	
Venues	1,381		1,830	
NGR per machine per annum	\$40,000		\$59,000	
<b>2003/04</b>				
Machines	74,912	(.4%)	24,197	(.2%)
State-wide NGR	\$3.2b		\$1.5b	
Venues	1,370	(.8%)	1,793	(.2%)
NGR per machine per annum	\$42,250	<b>+5.6%</b>	\$62,042	<b>+5.1%</b>
<b>2004/05</b>				
Machines	74,672	(.32%)	24,136	(.25%)
State-wide NGR	\$3.3b		\$1.6b	
Venues	1364	(.43%)	1792	0%
NGR per machine per annum	\$44,504	<b>+5.3%</b>	\$66,003	<b>+6.4%</b>

Source: [www.dgr.nsw.gov.au/industry\\_stats.asp](http://www.dgr.nsw.gov.au/industry_stats.asp)

The experience of NSW reflected in the 2002/03 to 2004/05 NGR results would seem to confirm the IPART finding that there is little evidence supporting the effectiveness of the measure of restricting external signage.

- **Current signage**
- **The Hindley Street factor**

Mark Henley of Wesley Uniting tabled at the IGA May hearings examples of signage he believed represented breaches of the advertising code. Included amongst those photos were a number of venues in Hindley Street, Adelaide. Interestingly, IGA Director, Robert Chappell also used Hindley Street as an example of powerful signage in an interview with Leon Byner of 5AA on the morning of 18 September 2006. He expressed the belief that in Hindley Street ‘some of the signs are pretty outrageous’. He may be well be correct in his evaluation but are the signs ‘outrageous’ from an aesthetic point of view which is neither an objective perspective or indeed

“evidence based”, or do they breach the Advertising Code. If they breach the Code, refer the matter to the Liquor and Gambling Commissioner.

The point that we make is that much of the signage in Hindley Street could be deemed ‘outrageous’ by a broad cross section of the community. Hindley Street signage advertises a range of businesses including bars, nightclubs, entertainment venues, sex shops, strip joints (i.e. Crazy Horse, Club X, 108 Lounge, The Palace, and Club Femme Erotica etc. etc.), amusement parlours, gaming venues and others. We argue that Hindley Street is so far removed from the mainstream that it cannot be seriously considered as an appropriate measurement of contemporary standards of advertising for the majority of Licensed Clubs and Hotels, to do so is offensive to the majority of licensed venues.

• **Codes of Practice Lack Clarity and Certainty of Interpretation**

The AHA-SA/CSA argued in our Review 2006 submission that the codes lack clarity and certainty of interpretation. Below is an extract from that submission;

***Extract from the Joint Response by the Australian Hotels Association (SA Branch) and Clubs SA to the Independent Gambling Authority Review 2006 - Regulatory Functions – 1 May 2006 - page 5***

The Codes of Practice have the same effect as subordinate legislation. They therefore need to be easily interpreted by people who work with them. Unfortunately there is significant room for disagreement as to the interpretation to be placed on certain aspects of the codes.

It is the AHA-SA/CSA submission that there can be no certainty of interpretation unless action is taken which results in a court determining the issues or the Codes are redrafted. Having to rely on disciplinary or other court action to determine the meaning of the Codes of Practice is clearly undesirable.

In particular the AHA-SA/CSA believes:

- The Responsible Gambling and the Advertising Codes of Practice pursuant to the Gaming Machines Act 1992 which came into force on 30 April, 2004 lack clarity, and are creating confusion to members and regulators.
- The codes create offences that were not envisaged by Parliament when enacting the Gaming Machines Act and Regulations.
- Licensees are unnecessarily being put at risk of penalty through the lack of clarity in interpretation of the codes.
- The codes are defective and difficult to interpret in their current form because the language used is inconsistent with that used in other legislation.
- Their ambiguity has been compounded by the Commissioner’s Circular. It is our submission that the Commissioner’s Guidelines, however well intentioned, cannot broaden the interpretation, create further offences or provide defences.
- The AHA-SA/CSA supports the intent and spirit of the codes. However, we submit that they need to be modified to ensure that they clearly and definitively convey their intent.
- The Codes of Practice are subordinate to the legislation, and care should be taken that in cases involving their statutory interpretation that they not be construed in a way to override or conflict with legislation.

We maintain that if there is a compliance issue with signage then those matters should be properly investigated, and if a breach is detected, appropriate action taken. If the issue is in fact that the Codes, including the Advertising Code, lack clarity and are creating confusion to venues **and regulators** then they need to be amended to ensure that they reflect what is intended.

- **Majority of signage directional (see DVD-R of 400 Venues)**

We attached to this submission photo galleries of some 400+ South Australian venues collected in the months of September and October 2006. They show overwhelmingly that the majority of venues have minimalist signage, signage complementary to the venue as a whole and in most cases directional and informative in character. There will be venues with signage consider potentially inappropriate or even ‘outrageous’ but clearly they are a very small minority. We would be available to review these with the IGA.

## Conclusion

The AHA-SA and Clubs SA therefore strongly urge the Authority to **convene a further public hearing** on this specific issue. This will enable proper examination of the issues, including an opportunity to learn from the interstate experience. It will also give the Authority an opportunity to objectively view a range of signage and not be swayed by anecdotal information and clearly biased photographs which were presented at the May hearing.

We would also be interested to understand why this particular matter has been raised in isolation of the other code considerations currently before the Authority. It is our understanding that the NSW legislation, which is now being considered by the Authority, was introduced in 2002 and therefore before the Authority’s review process of Stage 2 commenced. If the Authority has been encouraged to revise its original position in relation to signage i.e. allowing discreet and minimalist signage, on the basis of specific representations, we would welcome the opportunity to hear and respond to those submissions.

AHA-SA/CSA repeat the offer to work with the Authority on this issue and again urge the Authority to consider adopting the IPART approach of seeking **stakeholder consensus** where there is a lack of evidence to support the introduction of this measure. In our view **far more will be achieved to address the issue of problem gambling where the industry stakeholders understand and support the proposed measures** and where the measures “maintain an economically viable and socially responsible club and hotel gaming machine industry in this State’.

**AHA and Clubs SA joint submission—  
DVD forming part of submission**

The joint submission of the AHA and Clubs SA includes a DVD photo album of 400+ SA venues. That DVD is not included here but can be accessed in the office of the Authority.